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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,012	10/05/1999	ALBERT K. CHIN	4496	1400

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EXAMINER

NGUYEN, VI X

ART UNIT PAPER NUMBER

3731

DATE MAILED: 10/03/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

NK

Office Action Summary

Application No.

09/413,012

Applicant(s)

CHIN, ALBERT K.

Examiner

Victor X Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4,6-14 and 20-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4,6-14 and 20-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Reconsideration of Cited Arts

1. In the Final Office Action, Claims 4, 6-14 and 20-33 were indicated as allowed. The claims were amended accordingly. However, in light of a new interpretation of the Green, Haaga, Goodwin and Sierocuk references, the indicated allowable subject matter is now rejected.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 4, 6-9 and 11 are rejected under 35 U.S.C. 102 (b) as being anticipated by Green (U.S. 5,203,773).

Green shows in figures 1, 2 and 4, a device having all the limitations of claims 4, 6-9 and 11, including: an elongated cannula (25); a pointed obturator (not shown, labeled in col. 5, lines 34-35) is disposed on the distal end of the cannula for inserting into tissue; a dilating element (10) is being resilient (labeled in col. 4, lines 36-40) for displacing tissue to form a surgical cavity; and wherein a locking mechanism (26, 28) is disposed on the distal end of the cannula. The dilating element (10) further includes a lock (18).

Claim 10 is rejected under 35 U.S.C. 102 (b) as being anticipated by Haaga (U.S. 5,447,502).

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Haaga shows in figures 1, 4, 7, 8 , a device having all the limitations of claim 10, including: an elongated cannula (17); a tip (19) has a tapered outer walls and being disposed on the distal end of the cannula for inserting into tissue; a resilient dilating element (labeled in col. 7, lines 10-21) is disposed on the cannula (17); and wherein a sheath (36) has a distal end disposed upon the dilating element.

Claims 12-14 and 20-21 are rejected under 35 U.S.C. 102 (e) as being anticipated by Goodwin et al (U.S. 5,817,061).

Goodwin et al show in figures 1-3, a device having all the limitations of claims 12-14 and 20-21, including: a tissue dissector (11) has an expanded dimension and has a transparent tip (15, labeled in col. 4, lines 24-30) with tapered outer walls positioned at the distal end of the tissue dissector (11); wherein the step of advancing the tissue dissection is under the endoscopic visualization through the transparent tip; and wherein the step of expanding the surgical cavity is in a lateral direction (fig. 3) responsive to the portion of the tissue dissector.

Claims 22-33 are rejected under 35 U.S.C. 102 (e) as being anticipated by Sierocuk et al (U.S. 5,707,382).

Sierocuk et al show in figures 1,3,7 and col. 2, lines 14-55, a device having all the limitations of claims 22, 25 and 28, including: an elongate tubular dissection (17) device; a handle supported on the attachment (not labeled, fig. 1) is in on orientation out of the plane of the dissection device (17).

Regarding claims 23-24, 26-27 and 29-33, wherein the handle is position above the tissue dissection device (fig. 1). The handle is integrally formed with the attachment; and wherein the

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dissection device (17) includes a proximal end disposed to provide access to a lumen of the tubular dissection device through the attachment.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 5,226,890 to Ianniruberto

U.S. Pat. No. 5,591,183 to Chin

U.S. Pat. No. 5,817,062 to Flom

U.S. Pat. No. 5,514,236 to Avellanet


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Victor X Nguyen
Examiner
Art Unit 3731

Vn ✓
September 25, 2003


MICHAEL J. MILANO
SUPERVISORY PATENT EXAMINER
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